

New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The purpose of the proposed rule is to update sections 2-02, 2-09, 2-11, 2-14, 2-20 of Chapter 2 of Title 34 of the Rules of the City of New York (“Highway Rules”) to clarify existing requirements and to establish various new inspection requirements. Additionally, this proposed rule amends some existing penalty amounts and establishes new penalty amounts contained in Chapter 3 of Title 34 of the Rules of the City of New York (“Penalty Schedule”).

When and where is the hearing? The New York City Department of Transportation (DOT) will hold a public hearing on the proposed rule online. Members of the public may access and participate in this hearing online or by telephone. The public hearing will take place on Wednesday, June 29, 2022 at 10AM.

Join through Internet:

- To join the hearing via your browser, either click on the following URL link or copy and paste it into your browser’s address bar.
- Join Zoom Meeting using the following information:
<https://zoom.us/j/93140050468?pwd=d1lzOVNmZThheE1NTzJUVXgwMDVYQT09>

Meeting ID: 931 4005 0468

Passcode: 623850

- Then follow the prompts.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the phone option below for the hearing.

Join via phone only:

- To join the meeting only by phone, use the following information to connect:

Phone: 1-929 205 6099

Meeting ID: 983 6557 5547

Passcode: 623850

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@dot.nyc.gov.

- **Mail.** You can mail comments to Joseph Yacca, Administrative Superintendent of Highway Operations, 55 Water Street, 7th Floor, NY, NY 10041.
- **Fax.** You can fax comments to Joseph Yacca, Administrative Superintendent of Highway Operations, 212-839-8867.

By speaking at the hearing. Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing rules@dot.nyc.gov by June 28, 2022 and including your name and affiliation. While you will be given an opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, the deadline to submit written comments is Wednesday, June 29, 2022 at 5PM.

What if I need assistance to participate in the hearing? You must tell the DOT Office of the General Counsel if you need a reasonable accommodation of a disability during the hearing. You must tell us if you need a sign language interpreter. You can tell us by e-mailing at rules@dot.nyc.gov by June 20, 2022.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online and copies of all written comments concerning the proposed rule will be available through the DOT Freedom of Information Law (FOIL) Office at <https://a860-openrecords.nyc.gov/> or 55 Water Street, 4th Floor, New York, NY 10041.

What authorizes DOT to make this rule? Sections 1043(a) and 2903 of the New York City Charter (City Charter) authorizes DOT to make this proposed rule. This proposed rule was included in DOT's regulatory agenda for this Fiscal Year 2022 under several proposals. A few proposals that were not included were not anticipated at the time the regulatory agenda was prepared.

Where can I find the Department of Transportation rules? DOT's rules are in Title 34 of the Rules of the City of New York.

What laws govern the rulemaking process? DOT must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules regarding highway operations in the City pursuant to Section 2903(b) of the City Charter. The rules that DOT is seeking to amend are contained within Chapters 2 and 3 of Title 34 of the Rules of the City of New York, relating to its “Highway Rules” and “Penalty Schedule” respectively.

The purpose of the proposed rule is to update sections 2-02, 2-09, 2-11, 2-14, 2-20 of the Highway Rules to clarify existing requirements and to establish various new inspection requirements. Additionally, pursuant to Local Law 5 of 2018, the maximum civil penalty amounts relating to street construction, maintenance, repairs, obstructions and closures were increased significantly, particularly where public safety is involved. Accordingly, DOT is seeking to increase certain penalty amounts and establish new penalty amounts for violations adjudicated at the Office of Administrative Trials and Hearings. The increased and newly established penalties are expected to increase compliance with DOT’s rules and thereby promote public safety in the street construction and maintenance process.

More specifically, the following changes are being proposed:

- Section 2-02(a) would be amended to clarify that public utility companies and franchisees must obtain permits using their own corporate names instead of their sub-contractors’ names.
- Section 2-02(c)(2)(i) would be amended to clarify that signage is required at a single excavation and not only at series of excavations
- Section 2-02(c) would be amended to add a new paragraph (4), requiring that permittees add their identification numbers to any temporary construction, parking, raised plow or other regulatory signs.
- Section 2-02(d) would be amended to require entities to obtain permits as noted on corrective action requests (“CAR”), to respond to a CAR in a timely manner in order to avoid receiving a summons for failure to protest, and to remove language that a new permit is not required if restoration work does not entail an additional excavation or re-grading of hardware.
- Section 2-02(g) would be amended to require underground facility owners to be responsible for any surface defects caused by their facility underneath the roadway.
- Section 2-09(f)(4) would be amended by adding a requirement for removing all wood forms and/or tree guards prior to the expiration of the permit.
- Section 2-11(e)(10)(i) would be amended by allowing composite plates to be used to cover open

restorations or excavations.

- Section 2-14(f)(6) would be amended by adding the requirement that protection placed beneath the wheels of a refuse container must remain in place for the entire time such container is placed on the roadway in order to protect the street from damage.
- Section 2-14(f)(8) would be amended to require bike lanes to be kept clean and unobstructed of debris and garbage.
- Section 2-20(b)(7) would be amended by clarifying that all barricades must bear a sign in accordance with section 2-02(c)(2).
- Section 2-20(j)(4) would be amended to clarify that non-City electrical and/or non-electrical equipment located on or extending over a City street must be made safe within the time frame prescribed by DOT.
- Section 3-01 of Chapter 3 of Title 34 of the Rules of the City of New York would be amended to increase penalty amounts for certain violations and establish penalty amounts for new violations.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Subdivision (a) of Section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(a) Initial permit application. Public utilities or franchisees must apply for permits under their corporate name and not their sub-contractors' name. The following information shall be provided to the Department upon initial application for a permit under these rules and shall be updated as necessary and refiled annually:

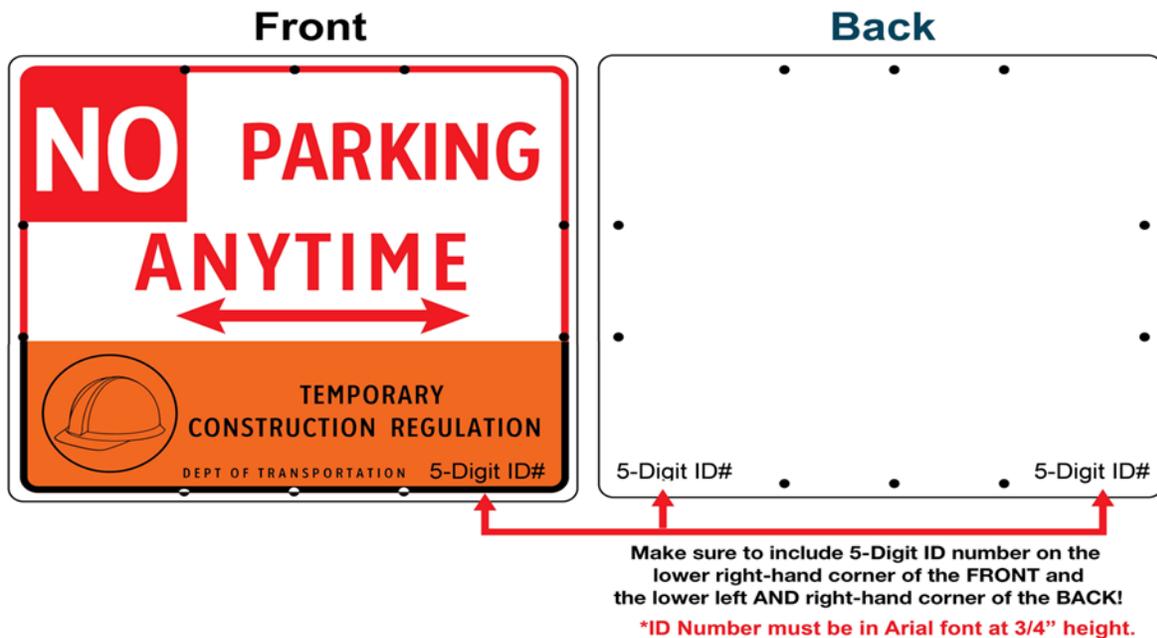
§2. Subparagraph (i) of Paragraph 2 of Subdivision (c) of Section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(2) Signage along a single street excavation, a series of excavations or [street openings] trenches.

(i) Permittees must post signs at any single street excavation or trench and/or at every 25-foot interval for a series of street excavations or trenches [100 foot intervals along a series of excavations or continuous cut], indicating the following:

§3. Subdivision (c) of Section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding a new paragraph (4) to read as follows:

(4) Permittees' identification numbers on temporary signs. Permittees must affix their Department issued five-digit identification number using a waterproof label or sticker on all temporary signs, including but not limited to temporary construction, raised plow, parking or regulatory signs. The lettering must be in Arial font black ink, 3/4 inch in height and width, placed at the lower right-hand corner of the front and the lower left and right-hand corner of the back of the sign as shown below. The labels/stickers must be visible/legible at all times. Permittees must replace any worn out or faded labels/stickers.



§4. Paragraphs 1, 2, 3 and 6 of Subdivision (d) of Section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(1) A CAR may be served [either personally,] by mail and/or by e-mail on the person responsible for the work and/or the condition which requires correction at his or her last known address, e-mail address or at the address or e-mail address for such person contained in the records of the Department. Where a CAR is served for a violation of § 19-147 of the Administrative Code, in the case of a utility company, the CAR may be given orally or in writing to a person or at a place designated by the utility and the utility shall respond within twenty-four (24) hours.

(2) Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein. Entities must obtain the required permit as noted on the CAR prior to performing the corrective action. Failure to obtain such a permit may result in a violation and the CAR will remain open until all conditions are satisfied.

(3) Within fourteen (14) days after the date of mailing of the CAR[, unless a different time is specified on the CAR or in these rules], the respondent may protest the issuance of the CAR in the manner directed on the CAR. If the respondent fails to timely protest the CAR and the Department issues a summons for an uncorrected condition, the respondent may be issued a summons for failing to respond to the CAR in a timely manner. If a protest is timely submitted and granted by the Department, the CAR fee will be waived.

(6) In the event that the original permit has expired before the corrective action is undertaken [and an additional excavation is necessary], a new permit, as noted on the CAR, shall be obtained in order to complete the required work. The new permit shall not affect the guarantee period, which will relate back to the original permit.[If a permittee is performing restoration work that does not entail an additional excavation or re-grading of hardware, a new permit shall not be required by the Department.]

§5. Subdivision (g) of Section 2-02 of Chapter 2 of Title 34 of the Rules of the City of New York is amended by adding a new Paragraph 4 to read as follows:

(4) Underground facility owners will be responsible for any surface defects caused by their facility underneath the roadway.

§6. Item (A) of Subparagraph (xx) of Paragraph 4 of subdivision (f) of Section 2-09 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(A) No trees shall be planted in the sidewalk area unless a Street Opening Permit is issued by the Department. No such permit shall be issued by the Department unless the prior written consent of the Department of Parks and Recreation authorizing the tree planting is furnished. Tree pits shall be constructed in accordance with the specifications. All wood forms and/or construction-related tree guards must be removed prior to the expiration of the permit.

§7. Paragraph 4 of subdivision (f) of Section 2-09 of Chapter 2 of Title 34 of the Rules of the City of New York is is amended by adding a new subparagraph (xxi) to read as follows:

(xxi) All wood forms must be removed prior to the expiration of the permit.

§8. Subparagraph (i) of Paragraph 10 of Subdivision (e) of Section 2-11 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(i) All plating and decking installed by the permittee shall be made safe for vehicles and/or pedestrians and shall be adequate to carry the load. Composite plates may be used provided that they comply with the AASHTO H25 or HS25 specifications.

§9. Paragraphs 6 and 8 of Subdivision (f) of Section 2-14 of Chapter 2 of Title 34 of the Rules of the City of New York are amended to read as follows:

(6) The street shall be protected with proper covering (e.g., planking, skids, plating, or pneumatic tires) to prevent damage before containers are placed on the street. Protection shall be placed directly under each steel wheel or roller of the container to adequately distribute the weight. Protection must remain in place for the entire time the container remains on the roadway. Placement of all protection shall be done upon delivery by the owner of the container. All planking and skids for containers shall be a minimum of 1½" to a maximum of 3" thick. Overall size of the protective covering shall be a minimum of 12" x 12" and the placement of the protective covering shall not exceed the outer dimensions of the container.

(8) Sidewalks, gutters, crosswalks, bike lanes and driveways shall at all times be kept clear and unobstructed and all dirt, debris and rubbish shall be promptly removed therefrom.

§10. Paragraph 7 of Subdivision (b) of Section 2-20 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(7) The roadway surrounding a street shunt shall be properly barricaded as a warning to vehicular traffic in the event that it is not feasible to install shunt boards (ramps) capable of withstanding constant, heavy vehicular traffic. All barricades must bear a sign pursuant to 34 RCNY § 2-02(c)(2) of these rules displaying the contractor's name and telephone number and the start and end dates of all work. The sidewalk areas over which the shunt runs and all wires shall be protected and ramped with a reflective covering.

§11. Paragraph 4 of Subdivision (j) of Section 2-20 of Chapter 2 of Title 34 of the Rules of the City of New York is amended to read as follows:

(4) When the owner of any non-city electrical and/or non-electrical equipment located on or extending over a City street, or attached to City property is notified by the Department that a repair or alteration of said equipment is needed for public safety purposes, the equipment shall be made safe within the time frame prescribed by the Department. However, in cases of emergency the equipment must be made safe within [but in no event more than] twenty-four (24) hours of notification. Complete repair or alteration shall be made within seven (7) days following notification as directed by the Department.

§12. Section 3-01 of Chapter 3 of Title 34 of the Rules of the City of New York is amended to read as follows:

§ 3-01 Department of Transportation Penalty Schedule.

<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>

<u>34RCNY 2-02(a)</u>	<u>Failure to apply for a permit under a public utility's or franchisee's corporate name</u>	<u>1500</u>	<u>4500</u>

<u>34RCNY 2-02 (c)(2)</u>	<u>Failure to display required signs at work site</u>	<u>[250]</u> <u>750</u>	<u>[350]</u> <u>2250</u>
<u>34RCNY 2-02 (c)(4)</u>	<u>Failure to have the necessary ID markings on DOT required signs</u>	<u>750</u>	<u>2250</u>
<u>34RCNY 2-02 (d)(2)</u>	<u>Failure to obtain proper permits to repair the conditions reported on a CAR.</u>	<u>500</u>	<u>1500</u>
<u>34RCNY 2-02 (d)(3)</u>	<u>Failure to timely protest a CAR</u>	<u>250</u>	<u>750</u>
<u>34RCNY 2-02 (g)(4)</u>	<u>Failure to repair defects caused by respondent's underground structure</u>	<u>1200</u>	<u>3600</u>

<u>34RCNY 2-09 (f)(4)(xx)</u>	<u>Failure to remove wood forms and/or tree guards upon expiration of the permit</u>	<u>250</u>	<u>750</u>
<u>34RCNY 2-09 (f)(4)(xxi)</u>	<u>Failure to remove wood forms upon expiration of the permit</u>	<u>250</u>	<u>750</u>

<u>34RCNY 2-11 (e)(10)(i)</u>	<u>Failure to use composite plates that comply with AASHTO H25 or HS25 specifications</u>	<u>1200</u>	<u>3600</u>

<u>34 RCNY 2-11 (e)(11)(v)</u>	<u>Failure to restore concrete base at same grade as existing base</u>	<u>[400]</u> <u>1,200</u>	<u>[1,000]</u> <u>3,600</u>
<u>34 RCNY 2-11 (e)(11)(vi)</u>	<u>Installing asphalt other than binder as a base course</u>	<u>[400]</u> <u>1,200</u>	<u>[1,000]</u> <u>3,600</u>

<u>34RCNY 2-14 (f)(6)</u>	<u>Failure to have the proper street protections under commercial refuse container <u>at all times</u></u>	<u>250</u>	<u>750</u>

<u>34RCNY 2-14 (f)(8)</u>	<u>Commercial refuse container/debris obstructing sidewalks, gutters, crosswalks, <u>bike lanes</u> or driveways.</u>	<u>250</u>	<u>750</u>

34 RCNY 2-20 (b)(4)	Failure to replace shunt with permanent connection within 90 days	[250] <u>750</u>	[500] <u>2,250</u>
<u>34RCNY 2-20</u> <u>(b)(7)</u>	<u>Failure to bear a sign pursuant to 34 RCNY 2-02(c)(2) with contractor's name, telephone numbers, start and end dates of all work</u>	<u>750</u>	<u>2250</u>

<u>34RCNY 2-20</u> <u>(j)(4)</u>	<u>Failure to repair non-city electrical and/or non-electrical equipment within the required time frame</u>	<u>750</u>	<u>2250</u>

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Highway Rules and DOT Penalty Schedule

REFERENCE NUMBER: DOT-68

RULEMAKING AGENCY: Department of Transportation

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violations pose significant risks to public safety.

/s/ Francisco X. Navarro
Mayor's Office of Operations

May 18, 2022
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Highway Rules and DOT Penalty Schedule

REFERENCE NUMBER: 2022 RG 038

RULEMAKING AGENCY: Department of Transportation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: May 17, 2022